

STATEMENT OF

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**UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**

BEFORE THE

**SUBCOMMITTEE ON COMMERCE, JUSTICE AND SCIENCE, AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
United States Senate**

“USPTO FY 2008 Budget Request”

MARCH 1, 2007

Chairwoman Mikulski, Ranking Member Shelby, and Members of the Subcommittee:

Thank you for this opportunity to appear before you to discuss the United States Patent and Trademark Office's (USPTO) operations, programs and initiatives and the President's FY 2008 budget request to fund those efforts.

I first want to take this opportunity to thank this Subcommittee and your colleagues on the House side for ensuring that our current fee schedule remains in effect for FY 2007. We look forward to working with you to make that fee schedule permanent.

We are also pleased that the FY 2008 budget request gives the USPTO full access to the \$1.9 billion in fees we expect to collect. This is the fourth consecutive year that the President's budget recommends full access to collected fees, and we appreciate the continued congressional support for that funding level.

Full access to user fees allows the USPTO to continue our successful model of disciplined focus on real measures that enhance quality and increase production, increase hiring and training, promote electronic filing and processing, provide telework opportunities for our employees and improve intellectual property protection and enforcement domestically and abroad.

As we entered the 21st century, the USPTO faced a number of challenges, all of which are well known to the Subcommittee. We did not have access to all of our fee collections, our workload in patents was growing at record and unanticipated rates, and there existed the perception that patent examiners did not produce high quality work while management ignored the growing backlog of patent cases and acted to erode employee

morale. Indeed, six months before I entered the USPTO as the Deputy Under Secretary, this Subcommittee had communicated its strong concerns with the agency in its report:

“The ability of the administration to formulate an adequate budget for the PTO is complicated by two factors. First, the agency historically has formulated an incremental budget based on the previous year's budget, and does not provide the Committee with a thorough business plan that demonstrates how resources will be used and what results will obtain. Second, PTO management has not been sufficiently innovative. * * * Finally, the Committee lacks full confidence in the information provided to it by PTO management regarding its needs and performance.”

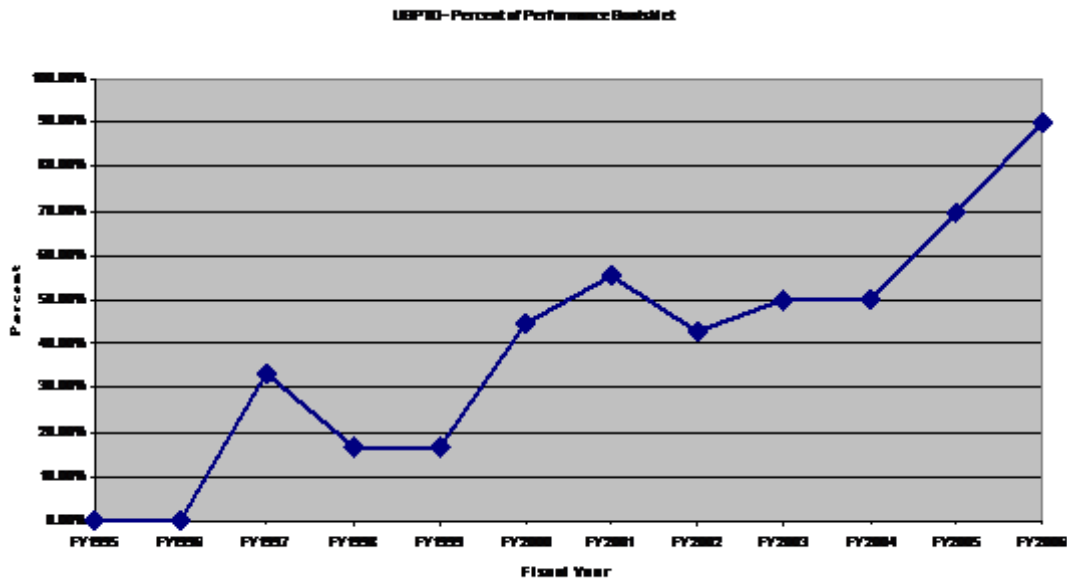
Senate Report 107-42.

This Subcommittee's concerns weighed heavily on the USPTO. As Deputy to Under Secretary Rogan, and upon assuming responsibility for the USPTO as Under Secretary in January 2004, I made commitments to the Administration, the Congress, our stakeholders and my dedicated colleagues at the USPTO to address these issues. I made specific promises, namely, that:

1. We would make quality our number one priority;
2. We would control pendency by increasing production;
3. We would “hire more, train better, retain better and telecommute”;
4. We would make patent processing fully electronic;
5. We would protect the U.S. intellectual property system and American interests internationally; and
6. We would reaffirm the USPTO's credibility within the Administration and with the Congress.

We made promises, and we have kept those promises. Thus, I am pleased to be able to share with you today the real, measurable successes the USPTO has achieved. The women and men of the USPTO, my colleagues, delivered results in record proportions in FY 2006. Last year, the USPTO set eleven all-time agency records, including: highest quality in history, highest production in history, highest hiring of examiners in history, highest electronic processing and electronic filing in history and allowing for more examiners than ever to work from home—saving them precious time and the rest of us space on the roads. In 2006, we were also chosen by *Business Week* magazine as one of the best places in America to launch a career. I can further promise you that the men and women of the USPTO will not rest on our accomplishments while we have so many things we still want to achieve..

This Subcommittee has made USPTO's recent successes possible. This is our third year operating under the new patent and trademark fee schedule, which provides funding appropriated by the Subcommittee. The reliable fee schedule permits us to finance the initiatives – particularly initiatives requiring long-term planning and commitment – so necessary to providing and maintaining reliable, functioning systems. Without your support, we would not be able to function in a business-like manner and achieve these results.



*USPTO – Percent of Performance Goals Met under the
Government Performance and Results Act of 1993*

Our success has been accomplished in the following manner. We have spent the last four years concentrating on meeting or exceeding objective measures, as required by the Government Performance and Results Act of 1993 (See chart above).

This requires continual assessments that identify system-wide process improvements. We use relevant metrics and measures to gauge progress and as early warning of deviations that indicate a need for process adjustment. Our record reflects the hard work and sound decisions of more than 8,000 USPTO employees. We are now seeing the results of their efforts.

Quality

We have focused our attention on improving quality. Public confidence in the quality of our patent grants and trademark registrations is critical. Confidence is earned, and we do not take it for granted. At the USPTO, we believe the essential components of quality are accuracy and consistency. We must ensure that allowed applications meet both statutory and regulatory standards, thus providing the certainty that enhances competition in the marketplace. We must not allow the need for timeliness to adversely impact the requirement for quality. Last year, despite receiving a record level of patent applications, we achieved the highest patent allowance compliance rate in nearly a quarter century at

96.5 percent. Our trademark organization had a final compliance rate of 96.4 percent—the best rate since we began measuring quality.

Human Resources

In September 2006, *Business Week* identified the USPTO as one of the best places in America to launch a career. The USPTO has also been lauded by *Families* magazine as one of the best places in the Washington, D.C. area to work if you have a family. These results are due in part to the fact that the USPTO seriously addressed the audit findings involving our past human resources practices.

We are now attracting and hiring record numbers of employees – at a rate of 1,200 new patent examiners a year. We started a new, university style approach to training, which allows us to deliver intensive, balanced and long-term training to newly-hired examiners. We now offer bonuses to hire and retain talented engineers and scientists in certain critical fields.

An achievement of which we are also proud is the number of patent examiners who have joined their trademark counterparts in working from home. Our 10 year old Telework program is the gold standard and has proven to be a key quality-of-life benefit for increasing employee morale and retention, and now 500 patent examiners per year have chosen this route.

In 2006, we also had the first ever Management Conference for all of the USPTO's 800 managers. For two days, our managers attended seminars and collaborated on best practices of how to best manage the highly skilled and dedicated workforce at the USPTO. On November 1, 2006, we also held an agency-wide “thank you” event for all of the USPTO's 8,000 plus employees. Senior executives served lunch and thanked our colleagues for making 2006 a record-breaking year. At the management level, we also have started to implement our long-term Strategic Human Capital Plan.

Electronic Government

Our commitment to e-Government has been unequivocal. In March 2006, we unveiled “EFSWeb,” the first-ever, user-friendly, Internet-based patent application and document submission system. Since last March, electronic filing of patent applications has skyrocketed from the 1% rate of FY 2005, to almost 40% filings today. In other words, in less than a year, almost 40% of our patent applications are now filed electronically, via the Internet. Last year, 94 percent of trademark applications were filed electronically, and we recently celebrated receipt of electronic trademark application number 1,000,000.

International IP

On the global level, we continue spreading the word about protecting and respecting intellectual property, both domestically and internationally. We are fully engaged in the Bush Administration's Strategy Targeting Organized Piracy (STOP!) in the fight against piracy and counterfeiting around the world. We hold intellectual property awareness conferences, with a focus on small-businesses, all around the country. More than 90 percent of the attendees have rated these programs as good or excellent, and it has been

described by at least one participant as “the best use of my taxpayer dollars.” Some of our conferences focus exclusively on doing business in China, from an intellectual property perspective.

The USPTO has the lead for the United States in discussions and negotiations to strengthen global intellectual property protection throughout the world. We operate the Global Intellectual Property Academy, which offers intensive patent, trademark, copyright and IP enforcement training for foreign government officials and private-sector representatives from around the world. Finally, we have placed intellectual property experts in Brazil, China, Egypt, India and Thailand, to advocate for improved intellectual property protection that benefits all, including our American businesses.

Production and Productivity

The rate of filing of applications in the United States continues to break records every year. The USPTO’s core business continues to grow at a steady pace. In FY 2006 we received 419,760 UPR (utility, plant and reissue) patent applications and expect an increase of 7% in FY 2007 followed by an anticipated annual increase of 8% in FY 2008 through FY 2012. In the Trademarks area, we received 354,775 applications and expect an increase of 6% in FY 2007 followed by an 8 % increase in FY 2008. Trademark applications are anticipated to increase by 7% in FY 2009 and increase 6% each year from FY 2010 through FY 2012.

This is a strong sign of growing innovation and investment in the United States, but it also represents potential strains on the system. The USPTO has the highest productivity of any major IP office in the world. The USPTO processes and examines more patent applications and more trademark applications than any other office in the world. Based on the latest statistics, the USPTO also has the lowest pendency of any other major office in the world. In addition, 2006 was a record year for production--from 2005 to 2006 production increased 18% in Trademarks and 16% in Patents.

Even with the success we have had increasing production and hiring, the volume of patent applications continues to outpace our capacity. Even with 1,200 new hires each year through 2012, pendency, which averages about 31 months now, will be nearly 39 months in 2012. Of course, hiring is critical--without that plan, pendency would be more than 50 months in 2012. However, as this Subcommittee has noted, hiring alone is simply not enough. As a result, the USPTO’s Strategic Plan released this year places a high emphasis on increasing productivity in the USPTO and in patent systems throughout the world by leveraging the work that is being done in other offices, by applicants themselves and from interested parties in the public.

While increasing productivity, we must take into account the incredible demands placed upon our examiners to issue on the highest quality results in an increasingly demanding world. The inventions for which patent protection is sought are becoming more technically complex. Complex technologies take more time to examine and make up an ever-greater percentage of applications. For the average application, an examiner now has to review 50 percent more claims and 300 percent more background literature. At the same time, the mix of more experienced, more productive examiners to less experienced, less productive examiner varies every year, as does the production loss to train new

examiners. For these reasons, patent productivity (the number of patent applications examined per examiner per year) has been steadily decreasing from 101 in 1993 to 78 in 2006.

These are challenges that we can and will overcome. In Trademarks, the USPTO increased productivity by seven percent in FY 2006 after negotiating a new performance plan. Although the trademark examiners union expressed good faith concerns that the vast majority of trademark examiners would fail under increased production and quality requirements, examiners flourished when given this opportunity to succeed--**70%** of trademark examiners earned a production bonus and the number of trademark examiners who received an “Outstanding” or “Commendable” rating grew by nearly ten percent.

We are adopting a number of strategies in the Patents area as well. The USPTO expects to increase productivity in patents by offering examiners more opportunities to determine their workload and achieve higher bonuses. The USPTO is piloting a **voluntary** flat goals program for patent examiners that builds upon the successful system in Trademarks

We are trying a variety of innovations, including a new offering for the public, called “Accelerated Examination.” Under this program, which began August 26, 2006, for those applicants who need or want quick turn around, the USPTO offers a complete examination within 12 months. In exchange for this quick turn around, applicants must file a complete application, agree to telephone interviews and accelerated response periods, must file and prosecute their application electronically and must provide more information about the application to the USPTO in the form of a search and a support document. The first application to be completed under this program was filed on September 29, 2006 and will issue on March 13, 2007 (less than six months from date of filing).

While the significant growth in patent and trademark applications indicates that innovation and entrepreneurship are alive and well, it presents our agency with a variety of challenges. We plan to use the following strategies to address these challenges which are included in USPTO’s FY 2008 budget request.

Strategy # 1: Hiring, Retention

The USPTO hired a record 1,218 patent examiners in 2006, exceeding our hiring goal by more than 200 examiners. The USPTO plans to hire 1,200 patent professionals a year in FY 2007 through FY 2012 for a total of at least 8,400 patent examiner new hires by end of year FY 2012.

Since more experienced examiners naturally are able to review cases faster, and in an excellent manner, the USPTO has implemented a program of recruitment bonuses to hire and retain the talented engineers and scientists we need to examine our increasingly complex applications. We are reviewing other possible programs to help us compete with industry for professionals in the “hot” technology sectors. We want to be an “employer of choice” to the pool of tech professionals.

Strategy # 2:**Training**

In FY 2006, the USPTO implemented a university approach to training new examiners. The university method provides training to new examiners in a classroom setting for eight months, rather than using the traditional one-on-one training model. This allows us to deliver intensive training to the new hired examiners, leaving more experienced examiners and supervisors to focus on quality examination. In FY 2006, 123 examiners completed the university's eight-month program. So far in FY 2007, a total of 225 new examiners completed training, with an additional 293 examiners slated to graduate by the end of the fiscal year.

Strategy # 3:**Quality Initiatives**

In FY 2008 and beyond, Patents will use a number of strategies to improve quality, such as:

- leveraging the effectiveness of the Patent Training Academy to enhance examiner skills;
- creating chief scientist positions;
- designing and implementing a comprehensive quality system to collect and analyze all quality review information for consistency and to provide feedback and improved training;
- offering a separate quality award that better recognizes the accomplishments of examiners who meet or exceed quality expectations;
- conducting targeted reviews in problem areas which focus on examination processes or functions that show problematic trends; and
- encouraging submissions of prior art by participating with a consortium of patent users, applicants, attorneys, and members of the academic community to build a system to actively solicit prior art.

Trademarks will continue quality improvements by increasing the use of quality review findings, analyzing and incorporating the results in training, examination guidelines, policies and manuals. In addition, Trademarks will create comprehensive new employee training programs, and explore the creation of web-based search tools, data mining, and automated preliminary searches so that examining attorneys can search more effectively.

Strategy #4:**E-Government**

The USPTO promotes electronic filing of applications. In FY 2006, 94% percent of trademark applications and 14% of patent applications were filed electronically. Trademarks and Patent programs estimate that rates of electronic submission of new applications will continue in FY 2007, at 90% and 40% respectively. In FY 2008, Patents expects to receive 50% of all patent applications electronically, while Trademarks will hold at approximately 90% or above of applications filed electronically.

Trademarks is continuing to enhance electronic filing by expanding the number and type of transactions offered on-line and by offering reduced fees to any applicant who files a complete applications using the newer system, the Trademark Electronic Application System-Plus (TEAS-Plus).

Patents implemented the Electronic Filing System-Web (EFS-Web), a user friendly, Internet-based patent application and document submission solution. This system dramatically increased the electronic filing of patent applications from 1.5 percent per month to 33 percent per month at the end of fiscal year 2006. This easy to use system will continue to encourage applicants to file electronically.

Patents is developing the electronic Patent File Wrapper (PFW) as the solution to several business problems. PFW in conjunction with current Patent Automated Information Systems (AIS's) will allow for a fully automated, text-driven patent application processing system.

Strategy #5: Telework

In FY 2006, a pioneer group of 500 patents examiners participated in the newly implemented Patent Hoteling Program (PHP). This voluntary program is designed to comply with Congressional direction and build upon the lessons learned from the very successful Trademark Work-at-Home program. The PHP provides patent examiners the ability to work from home with complete on-line access to the USPTO resources. This concept allows participants to reserve time in designated shared “hotel” offices at the Carlyle Campus in Alexandria, Virginia. We plan to add 500 more examiners to the hoteling program in FY 2007. The goal of the hoteling program is to change the boundaries of the old workplace patterns allowing for decreased commute time, greater control over workloads, and even a more balanced lifestyle for our employees. This all translates into increased employee productivity and satisfaction, as well as higher employee retention. On a more long-term basis, we hope to create a workplace that can be anywhere, any time. Patents will also pilot a work-at-home program for technical support staff.

In 2006, Trademark’s work-at-home program for examining attorneys received the “Telework Program with Maximum Impact on Government Award” from the Telework Exchange. The Trademark work-at-home program is considered a “best practice” because of its success in addressing budgetary, space, retention, recruitment, and job satisfaction issues. During 2006, Trademarks expanded this program to include 85 percent of all eligible employees.

Strategy #6: International

With substantial congressional support, the USPTO has significantly expanded its efforts to strengthen intellectual property (IP) rights protection globally. As part of the Bush Administration’s Strategy Targeting Organized Piracy (STOP!) initiative and the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), the USPTO worked with other U. S. Government agencies to fight piracy and counterfeiting around the world. We collaborate on IP training, advocating progress in IP-related norm-setting bodies (e.g., intergovernmental organizations such as World Intellectual Property Organization (WIPO)), and enforcement efforts with our colleagues in the Departments of Commerce, Justice, and State; the Department of Homeland Security’s Customs and Border Protection; the Copyright Office; and the Office of the United States Trade Representative (USTR).

As part of STOP! the USPTO continues a communications campaign to educate small businesses about protecting their IP in the United States and abroad. Small business conferences are offered throughout the country and other USPTO conferences focus exclusively on the IP challenges of doing business in China. The USPTO continues to staff the STOP! Hotline, which lets callers receive information on IP rights and enforcement from our attorneys with regional and subject matter experts. In 2006, the hotline received 1,460 phone calls from people across America with a range of IP questions – an increase of 52 percent over 2005.

To strengthen global IP protection, the USPTO represented the United States in discussions and negotiations at the WIPO throughout 2006. Most notably, the USPTO led a delegation to the WIPO Diplomatic Conference, which culminated in the adoption of the Singapore Treaty on the Law of Trademarks. The new treaty will help trademark owners around the world file applications and renew registrations with fewer formality requirements.

The USPTO has promoted IP protection in China. Through the Joint Commission on Commerce and Trade and its Intellectual Property Rights Working Group, the USPTO and USTR have negotiated commitments from the Chinese Government to reduce counterfeiting and piracy.

The USPTO has established the Global Intellectual Property Academy and has conducted IP rights programs for foreign government officials and private sector representatives around the world. Additionally, we have placed IP experts in Brazil, China, Egypt, India, Thailand, and Geneva to advocate improved IP protection for American businesses and to coordinate training to help stop piracy and counterfeiting abroad.

Strategy #7: Business Continuity/Disaster Recovery

The USPTO Business Continuity Program/Disaster Recovery Program is committed to ensuring protection of USPTO data and systems from damage or unavailability in the event of a disaster or prolonged outage. The USPTO is operating both the patent and trademark production pipelines in a predominantly electronic environment and is dependent on automated systems to support the end-to-end processing of patent and trademark applications. As such, the continuing operations of the USPTO are at an increased risk should catastrophe strike the single data center prior to the full deployment of disaster recovery services. We are undertaking a phased implementation for deploying dual, load balanced data centers that would enable us to protect our mission critical patent and trademark data.

The USPTO's Business Continuity Program completion timeline will occur in five major phases. As part of phase one, in 2007 the USPTO will establish an off-site data "bunker," far enough away from our current data center to prevent a disaster from affecting both sites. Phase two will begin with the establishment of a 'warm site' that can be activated in the event of a disaster at the primary data center. Future phases will provide distributed processing, load balancing, and automatic fail over for both core and non-core systems.

Conclusion

Intellectual property rights is a critical aspect of how nations protect and promote innovation and global competitiveness. The United States represents the gold standard for intellectual property protection, and the USPTO is the most productive and most respected intellectual property office in the world. However, because intellectual property protection is so fundamental to our nation's economic growth, being the best is not enough. We must be perfect. Despite the challenges, we at the USPTO strive to get it perfect, and we look forward to working with the Subcommittee to ensure that we do.

Thank you.